UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,628	12/31/2001	JianMin Wu	INMEP0105US	5838

7590 02/01/2006	**EXAMINER**
Andrew Romero	ALI, SYED J
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ART UNIT	PAPER NUMBER
2195	

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DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action **Before the Filing of an Appeal Brief**	Application No. 10/036,628	Applicant(s) WU ET AL.	
	Examiner Syed J. Ali	Art Unit 2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>27 December 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.
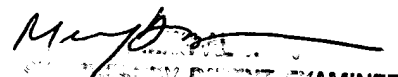
      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *21-28*.

   Claim(s) withdrawn from consideration: *None*.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-303 (Rev. 7-05)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20060130

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments center on the alleged deficiencies of Kung with respect to the "daisy chain" approach of forwarding calls in a VoIP system. Applicant alleges that in the claimed invention, when the primary VoIP proxy server determines it is overloaded, it forwards the request to a delegate server that also performs a self-determining overload check. If the delegate server has adequate call capacity, it processes the call, otherwise it continues the forwarding process by forwarding to another delegate until a delegate that has adequate call capacity is found. Applicant alleges that Kung cannot anticipate the claims because the overload handling is not performed in this "daisy chain" fashion.

Examiner concedes that Kung does not teach or suggest a "daisy chain" method of forwarding call requests. Rather, when the primary VoIP server determines that it is overloaded, it inquires of the status of other servers before making a determination of which server to delegate the call to. In this sense, Kung knows before forwarding the request that the delegate has adequate call capacity to service the call. This is distinct from the daisy chain method in that only one forwarding request is needed rather than a potentially innumerable amount of forwarding requests.

However, before the claimed invention can be said to be patentably distinct from Kung, it must be apparent that the claims are distinct from Kung. A close reading of the claims indicates that they are drafted in such a way that the "daisy chain" method is superfluous at best, i.e. the delegate server to which a request is forwarded will never be overloaded when the initial transfer occurs. In step b.i) of claim 21, the delegate server is selected only if it has "a lower workload than at least one other of the plural VoIP proxy servers." Necessarily, this workload level is less than the threshold for triggering an overload condition. Since a server stops accepting incoming requests once the overload level is reached, the "predetermined threshold" can be said to be a cap on how high a workload level can be. By requiring that the delegate be selected only if the workload level is less than some other server, it must necessarily be less than the "predetermined threshold." Since Kung chooses a least loaded server (col. 31 lines 16-18, "the alternative call manager is based on a report of the set of reports that indicates a greatest available call capacity"), the selection process mirrors that of step b.i).

Applicant's arguments seem to indicate that the selection of a delegate server is indiscriminating, i.e. the primary server forwards the request to another server and lets the delegate sort out whether or not the call can be supported. However, by requiring the delegate have a lower workload than at least one other server, there must be some step of determining what delegate must be better suited for handling the request. Kung teaches a workload amelioration method that is practically identical. It appears that the daisy chain method of forwarding is more likely to come into play at a later time, once the delegate has been handling the call for a period of time and an overload condition is triggered. However, the claim is presented as handling the initial offloading, wherein the initial offloading in the claim is the same as that performed by Kung.